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Compendium of

1999

HAWAII FISHING LAWS

New for this release: Section 171-58.5 (amended 1995), Section 187A-6.5 (amended), Section 187A- 12.4 (new), Section 187A-13 (amended), Section 187A-14 (amended), Section 187A-15 (amended), Section 188-25 (repealed), Section 188-28.5 (repealed), Section 188-29 (repealed), Section 188-29.1 (repealed), Section 188-30 (repealed), Section 188-30.2 (repealed), Section 188-30.5 (repealed), Section 188-40 (repealed), Section 188-41 (repealed) Section 188-44 (amended), Section 188-45 (amended), Section 188-46 (repealed), Section 188-57 (amended), Section 188-58 (repealed), Section 188-68 (amended), Section 188-70 (amended), Section 189-2 (amended), Section 189-3 (amended), Section 189-4 (amended), Section 189-6 (amended), Section 189-13 (repealed), Section 189-14 (amended), Section 189-16 (repealed), Section 190-5 (amended), Section 199-7 (amended)

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of selected Chapters
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DISCLAIMER

This compendium of Hawaii Revised Statutes is intended for information only and is not a legal document. We have attempted to be as accurate as possible but errors may occur. The reader should consult the Hawaii Revised Statutes for the official version of the statute. Should there be any difference between this compendium and the Hawaii Revised Statutes, the Hawaii Revised Statutes will prevail.

Please be advised that this is a compendium of statutes only and does not include regulations found in the administrative rules of the Department of Land and Natural Resources. The reader should consult the nearest office of the Division of Aquatic Resources for the full text version of the administrative rules.

SUBTITLE 5. AQUATIC RESOURCES AND WILDLIFE

CHAPTER 187 GENERAL PROVISIONS RELATING TO AQUATIC RESOURCES AND WILDLIFE

REPEALED. L 1986, c 275, §1.

CHAPTER 187A AQUATIC RESOURCES

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PART 1. GENERAL PROVISIONS

§187A-1 Definitions. As used in this subtitle, unless the context indicates otherwise:

"Aquaculture" means the farming or ranching of aquatic life in a controlled salt, brackish, or fresh water environment; provided that the farm or ranch is on or directly adjacent to land.

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots, products, and other parts thereof.

"Board" means the board of land and natural resources.

"Commercial marine dealer" means any person who sells or exchanges, or who is an agent in the transfer of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

"Commercial marine license" means a license issued to take marine life within or outside the State for commercial purpose.

"Commercial marine licensee" means a person who has been issued a commercial marine license pursuant to section 189-2.

"Commercial purpose" means the taking of

marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

"Department" means the department of land and natural resources.

"Fishing" or "to fish" means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear which is designed to catch, take, or harvest aquatic life, by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be caught, taken, or harvested, shall be deemed to be fishing.

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweeds or other marine plants, including any part, product, seed, or root thereof.

"Qualified aquaculturist" means a person, or association of persons, actively engaged in aquaculture farming, aquaculture produce processing, or aquaculture product development activities.

["Take" **DELETED** [am L 1991, c 160, §§1, 4]

Revision Note

Definitions rearranged.

§187A-1.5 State marine waters. As used in this chapter, state marine waters shall be defined as extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary. [L 1990, c 126, §1]

§187A-1.6 Applicability of statutes and rules. This subtitle and any rules under this subtitle relating to fishing which are applicable to state marine waters shall also apply to the following persons in waters outside state marine waters but within the federal conservation zone:

- (1) Residents of the State;
- (2) Any commercial marine licensee; and
- (3) Any permittee or licensee under this subtitle. [L 1991, c 160, §2]

“§187A-2 Powers and duties of department. The department shall:

- (1) Manage and administer the aquatic life and aquatic resources of the State;
- (2) Establish and maintain aquatic life propagating station or stations;
- (3) Establish, manage, and regulate public fishing areas, artificial reefs, fish aggregating devices, marine life conservation districts, shoreline fishery management areas, refuges, and other areas pursuant to title 12;
- (4) Subject to this title, import aquatic life for the purpose of propagating and disseminating the same in the State and the waters subject to its jurisdiction;
- (5) Distribute, free of charge, as the department deems to be in the public interest, aquatic life, for the purpose of increasing the food supply of the State; provided that when, in the discretion of the department, the public interest shall not be materially intertered with by so doing, the department may propagate and furnish aquatic life to private parties,

- upon such reasonable terms, conditions, and prices determined by the department;
- (6) Gather and compile information and statistics concerning the habitat and character of, and increase and decrease in, aquatic resources in the State, including the care and propagation of aquatic resources for protective, productive, and aesthetic purposes, and other useful information, which the department deems proper;
 - (7) Enforce all laws relating to the protecting, taking, killing, propagating, or increasing of aquatic life within the State and the waters subject to its jurisdiction: and
 - (8) Formulate and from time to time recommend to the governor and legislature such additional legislation necessary or desirable to implement the objectives of title 12. [L 1985, c 94, pt of §1, am L 1988, c 176, §7]

Cross References

Aquaculture advisory council, see chapter 189G. Chapter 189G is repealed.

SECTION 187A-3, Hawaii Revised Statutes, is repealed. ([L1988, c 176, pt 9])

§187A-3.5 Aquaculturist license and license to sell prohibited aquatic life. (a) Notwithstanding the provisions in subtitle 5 of title 12, or administrative rules adopted thereunder, the department may issue to any qualified aquaculturist a license to fish, possess, rear, and sell any aquatic life whose fishing, possession or sale is prohibited by closed season, minimum size, or bag limit; provided that the qualified aquaculturist rears or reared the aquatic life in an aquaculture facility.

(b) The department may further issue to any person a license to possess or sell or offer for sale any aquatic life whose possession or sale is prohibited by a closed season, minimum size, or bag limit; provided that the aquatic life was reared by a licensed qualified aquaculturist in an aquaculture facility pursuant to subsection (a).

(c) The department may adopt rules pursuant to chapter 91, to implement this section by establishing the licenses, fees, and terms or conditions necessary for the fishing, possession, or sale of aquatic life whose fishing, possession, or sale is prohibited by closed season, minimum size, or bag limit. [L 1995, c 111]

§187A-4 Administrator. The board shall appoint an administrator of aquatic resources who shall have charge, direction, and control of all matters relating to aquatic resources management, conservation, and development activities under this title, and such other matters as the board may direct. The administrator shall be trained and educated in natural resource management. [L 1985, c 94, pt of §1]

§187A-5 Rules. Subject to chapter 91, the department shall adopt, amend, and repeal rules for and concerning the protection and propagation of introduced and transplanted aquatic life, or the conservation and allocation of the natural supply of aquatic life in any area. The rules may include the following:

- (1) Size limits;
- (2) Bag limits;
- (3) Open and closed fishing seasons;
- (4) Specifications and numbers of fishing or

taking gear which may be used or possessed; and

- (5) Prescribe and limit the kind and amount of bait that may be used in taking aquatic life, and the conditions for entry into areas for taking aquatic life.

The rules may vary from one county to another and may specify certain days of the week or certain hours of the day in designating open seasons. All rules shall have the force and effect of law. Any person who violates any of the rules adopted pursuant to this section shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished as provided by section 188-70. [L 1985, c 94, pt of §1]

§187A-6 Permits for taking aquatic life for scientific, educational, or propagation purposes. (a) Notwithstanding the provisions of any other law, the department may take aquatic life for scientific, educational, or propagation purposes, except as prohibited by chapter 195D.

(b) Notwithstanding the provisions of any other law, the department may issue permits, not longer than one year in duration, to any person to fish or possess or use fishing gear otherwise prohibited by law, in any part of the State, for scientific, educational, or propagation purposes, except as prohibited by chapter 195D and subject to those restrictions the department deems desirable. The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation.

(c) The department may adopt rules pursuant to chapter 91 for the purpose of this section. [L 1985, c 94, pt of §1; am L 1991, c 160, §3; am L 1992, c 96. §1]

§187A-6.5 Release and confiscation of harmful aquatic life. (a) No person shall release any live non-native fish or other live non-native aquatic life being held in an aquarium or other confinement for scientific study, exhibition, sale, or for any other purpose, into any waters of the State, except as provided in section 187A-2(4).

(b) The department or its agents may seize, confiscate, or destroy, as a public nuisance, any fish or other aquatic life found in any waters of the State and whose importation is prohibited or restricted pursuant to rules of the department of agriculture. [L 1993, c 256, §1; am L 1999, c 195, §2]

§187A-7 Expenditures. (a) The department may expend all appropriations made for the purpose of effectuating the objects of title 12.

(b) To further the purposes of title 12, the department may:

- (1) Use lands set apart for the department's use by the governor; and
- (2) Accept gifts and contributions or enter into contracts. Gifts and contributions may be accepted from, or contracts entered into with, public or private agencies or individuals. Any gifts and contributions accepted under this section to benefit sport fish or sport fishing shall be subject to the requirements specified under section 187A-9.5.

(c) All expenditures by the department shall be approved and certified by the board. [L 1985, c 94, pt of §1; am L 1993, c 143, §2]

§187A-8 Cooperation with other

governmental authorities. The department shall endeavor to secure the cooperation and assistance of and shall cooperate with the appropriate agency of the United States or other governmental authorities having an interest in the subject matter of title 12, in every way possible, for the promotion of the purposes of title 12. More specifically, the department may permit the appropriate agency of the United States or other governmental authorities to occupy any land or building and use any appliance, apparatus, or property held or controlled by the department, either independently or in conjunction with the department, upon such terms and conditions as the department and the agency may mutually agree. [L 1985, c 94, pt of §1]

§187A-9 Federal aid in sport fish restoration. The State hereby assents to the provisions of the Federal Aid in Sport Fish Restoration (Dingell-Johnson/Wallop-Breaux) Act (64 Stat. 430, 16 U.S.C. §777), as amended. The department shall perform those acts as may be necessary to the conduct and establishment of cooperative aquatic life restoration, management, development, aquatic education, and recreational boating access projects, as defined in the Act of Congress and in compliance with the Act and regulations adopted by the Secretary of the Interior thereunder; provided that federal aid funds granted under the Act shall be used for the purposes of approved projects, and no funds accruing to the State from license fees paid by sport fishers, including any interest, dividend, or other income earned from the license fees, shall be diverted for any purpose other than as provided for in the Act and regulations adopted pursuant thereto. [L 1985, c 94, pt of §1; am L 1993, c 143, §3]

§187A-9.5 Sport fish special fund. (a) There is established in the department a sport fish special fund.

(b) The following proceeds shall be retained by or transmitted to the department for deposit into the sport fish special fund:

- (1) Moneys collected as fees for sport fishing licenses and permits, attendance of aquatic resource education programs, use of public fishing areas or other fishing grounds for sport fishing purposes, and use of sport fisheries-related facilities;
- (2) Moneys collected under the provision of any law or rule related to the importation, taking, catching, or killing any sport fish;
- (3) Moneys, other than informers' fees authorized under section 187A-14, collected as fines or bail forfeitures for sport fishing violations of this chapter and chapters 188, 189, and 190;
- (4) Moneys collected from the sale of any article purchased from the department related to sport fish or sport fishing;
- (5) Any monetary contributions or moneys collected from the sale of non-monetary gifts to benefit sport fish or sport fishing; and
- (6) Moneys derived from interest, dividend, or other income from the above sources.

(c) Expenditures from the sport fish special fund shall be limited to the following:

- (1) For programs and activities to implement title 12, subtitle 5, including the provision of state funds to match federal grants under the Federal Aid in Sportfish Restoration (Dingell-Johnson/Wallop-Breaux) Act (64 Stat. 430, 16 U.S.C.

§777), as amended, for projects concerning sport fish;

- (2) For acquisition of the use, development, or maintenance of trails and accessways into public fishing areas, fishery management areas, marine life conservation districts, or private lands where public fishing is authorized; and

- (3) For research programs and activities concerning sport fish conservation and management. Research programs and activities conducted under this paragraph may be conducted by personnel of the department or through grants-in-aid to or contracts with the University of Hawaii or other qualified organizations or individuals.

(d) The proceeds of the sport fish special fund shall not be used as security for, or pledged to the payment of principal or interest on, any bonds or instruments of indebtedness.

(e) In addition to subsection (c), the department may use moneys in the sport fish special fund for the importation into, and the management, preservation, propagation, and protection of sport fishes in, the State; provided that the department, prior to authorizing expenditures or expending funds from the sport fish special fund, first shall attempt to use those funds to maximize the State's participation to secure federal funds under the Federal Aid in Sportfish Restoration (Dingell-Johnson/Wallop-Breaux) Act, as amended.

(f) Nothing in this section shall be construed as prohibiting the funding with general funds or other funds of programs and activities to implement or enforce title 12, subtitle 5, concerning sport fish management and conservation. [L 1993, c 143, §1]

§187A-10 Agents to sell licenses. (a) The department may designate agents to sell fishing licenses in accordance with this section. Agents shall report all sales of licenses to the department monthly and not later than the fifteenth day of the month following the month covered by the report. Wilful failure to make a report shall be cause for cancellation of the agency and upon the cancellation a full accounting and settlement for all licenses shall be made forthwith. All fees collected shall be remitted to the department at the same time as the report of license sales is made. If the agents prepay for the licenses, then the fees collected shall be retained by agents, rather than remitted to the department.

(b) Agents shall receive ten per cent of the value of licenses sold. All reports on license sales shall be made on forms supplied by the department. The duly authorized agents of the department may administer oaths as required in license applications. Chapter 40 shall not apply to the agents. [L 1985, c 94, pt of §1; am L 1987, c 93, §1]

§187A-11 Disposition of revenues. All moneys collected each month as fees for commercial marine activities, including commercial marine licenses, marine product licenses, and all other moneys collected under the provisions of any law relating to the importation, taking, catching, or killing of aquatic life, and products thereof, except sport fish, shall be deposited with the director of finance to the credit of the general fund. The moneys collected shall be available for expenditure only for the department in accordance with appropriations authorized by the legislature and shall be expended by the department for the importation, management, preservation,

propagation, and protection of aquatic life into or in the State, and for the payment of expenses incurred in the prosecution of offenders against the aquatic resource laws of the State, and for the conservation of commercial fisheries and all phases of the work pertaining thereto and all expenses connected therewith, which the department deems expedient. [L 1985, c 94, pt of §1; am L 1993, c 143, §4]

§187A-12 University of Hawaii may use land, etc. The University of Hawaii shall have the privilege, free of charge, of using the land, buildings, apparatus, and appliances of the department for the purposes of a biological laboratory and for research and investigation in connection therewith, so far as the same can be done without material interference with the use of the same as an aquatic life propagation station or for other aquatic-resources activities. The university shall render to the department, in return therefor, such assistance as is reasonably practicable, in connection with the aquatic life propagation station or for other aquatic-resources activities, and as may be mutually agreed upon. [L 1985, c 94, pt of §1]

§187A-12.4 Receipts and reports. Any person who knowingly misrepresents any material fact or makes a false statement in any document required by subtitle 5 of title 12, or any rule adopted thereunder, shall be guilty of a petty misdemeanor and punished as provided by law. [L 1999, c 195, §1]

§187A-12.5 General administrative penalties. (a) Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines, fees, and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 5 of title 12 or any rule adopted thereunder.

(b) For violations involving threatened or endangered species, the administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$5,000;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$10,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$15,000.

(c) For all other violations the administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$1,000;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$2,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$3,000.

(d) In addition to subsection (b), a fine of up to \$5,000 may be levied for each specimen of threatened or endangered aquatic life taken, killed, or injured or threatened or endangered rock or coral taken, broken, or damaged in violation of subtitle 5 of title 12 or any rule adopted thereunder.

(e) In addition to subsection (c), a fine of up to \$1,000 may be levied for each specimen of all other aquatic life taken, killed, or injured or rock

or coral taken, broken, or damaged in violation of subtitle 5 of title 12 or any rule adopted thereunder.

(f) Any criminal penalty for any violation of subtitle 5 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from recovering additional administrative fines, fees, and costs, including attorney's fees and costs. [L 1997, c 243, §1]

§187A-13 General penalty. (a) Any person violating this chapter or any rule adopted thereunder for which a penalty is not otherwise provided, shall be guilty of a petty misdemeanor and, in addition to any other penalties, shall be fined not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(b) The fines specified in this section shall not be suspended or waived. [L 1985, c 94, pt of §1; am L 1999, c 195, §3]

§187A-14 Informer's fee. One-half of the fine imposed and collected in all cases wherein the defendant has been convicted for a violation of subtitle 5 of title 12 or any rule adopted thereunder shall be paid to the person giving the information leading to the arrest of the person so convicted; provided that this section shall not apply if the informer is a regular salaried sheriff, deputy sheriff, police officer, warden or constable, or officer or agent of the department. [L 1985, c 94, pt of §1; am L 1999, c 195, §4]

§187A-15 Rights of inspection of catch. Any agent of the department upon whom the board has conferred powers of police officers or any other enforcement officer of the State shall have the authority to conduct examinations and searches of:

- (1) The contents of any bag or container of any kind used to carry aquatic life; or
- (2) Any vehicle or conveyance used to transport aquatic life;

if such agent or officer has probable cause, as provided by law, to believe that such bag, container, vehicle, or conveyance contains evidence of a violation of subtitle 5 of title 12 or any rule adopted thereunder. No person shall refuse any enforcement officer of the department or any other enforcement officer of the State such examination and search. [L 1991, c 202, §1; am L 1999, c 195, §5]

PART II. FISHING RIGHTS

§187A-21 Public fishing grounds. Except as otherwise provided by law, all fishing grounds appertaining to any government land or otherwise belonging to the government, except ponds, shall be and are forever granted to the people for the free and equal use by all persons; provided that for the protection of these fishing grounds, the department may manage and regulate the taking of aquatic life. [L 1985, c 94, pt of §1] HB192

§187A-22 Use of adjoining lands. No person who has bought any government land, or obtains the land by lease or other title, has or shall have greater right than any other person over any fishing ground not included in the title, although adjacent to the land. [L 1985, c 94, pt of §1]

§187A-23 Konohiki rights. (a) The fishing grounds from the reefs, and where there happens

to be no reefs, from the distance of one geographical mile seaward of the beach at low watermark, in law, shall be considered the private fishery of the konohiki, whose lands by ancient regulations, belong to the same. These vested fishing rights for the private fishery must be established by proceedings in conformity with section 96 of the Organic Act, and for which judgment has been entered in any circuit court. The established private fishery shall not be disturbed, except to the extent of the reservations and prohibitions set forth in this section, or by law or rule.

(b) The konohiki shall be considered in law to hold the private fishery for the equal use by the konohiki and the tenants on their respective lands, and the tenants shall be allowed to take for home consumption or commercial purposes, any aquatic life of the fisheries, subject to the restrictions imposed by the konohiki as provided in this section, or by law or rule.

(c) A konohiki each year may set apart one given species or variety of aquatic life natural to the private fishery, by giving public notice by posting at least three written or printed notices in conspicuous places on the land or fishery, to the tenants and others residing on the land, signifying by name, the kind of aquatic life which has been set apart for exclusive use by the konohiki; provided that the konohiki may not reserve more than one kind of aquatic life, if the konohiki possesses other private fisheries which are immediately adjacent to each other. The notice shall be substantially in the following form:

NOTICE

Fishing for (name of aquatic life) in private fishery is hereby prohibited between (specific period).

Konohiki.

The specific aquatic life set apart shall be exclusively for the use of the konohiki within the specified period, and neither the tenants nor others shall take the reserved aquatic life within the private fishery. The konohiki may bring legal action against any person to recover the value of the reserved aquatic life which has been taken within the private fishery.

(d) The konohiki, upon consultation with the tenants of their lands and in lieu of setting apart one given species or variety of aquatic life for exclusive use as allowed in this section, may prohibit during certain months of the year, all taking of aquatic life within the private fishery; provided that during the fishing season within the private fishery, the konohiki may exact up to one-third of the aquatic life taken within the private fishery from each fisher among the tenants. In such case, the konohiki shall give notice as prescribed in this section.

(e) If the specific aquatic life which has been reserved within the private fishery for exclusive use by the konohiki goes onto the public fishing grounds, such aquatic life may be taken by any person.

(f) The konohiki shall not have any power to impose any tax or restriction upon the tenants regarding the private fisheries, except as provided by this section, or by law or rule.

(g) The vested fishing rights for a private fishery when established may be condemned for use as a public ground; provided that the private fishery shall continue until judgment is entered upon the condemnation proceedings and the compensation named therein has been paid or tendered to the konohiki, or others interested

therein, or until an order of possession has been issued as provided in sections 101-28 to 101-32.

(h) Any person who takes any aquatic life which has been set apart for the konohiki's exclusive use or to which the konohiki is otherwise entitled as provided in this section or who aids and abets the taking or who without lawful authority fishes in or upon the private fishery shall be punished as provided in section 187A-13. [L 1985, c 94, pt of §1]

CHAPTER 188 FISHING RIGHTS AND REGULATIONS

SECTION PART I. FISHING RIGHTS

188-1 - 14 **REPEALED**

PART II. FISHING REGULATIONS, GENERALLY

188-21, 22 **REPEALED**

188-22.5 **STATE MARINE WATERS**

188-22.6 **DESIGNATION OF COMMUNITY BASED SUBSISTENCE FISHING AREA**

188-23 **POSSESSION OR USE OF EXPLOSIVES, ETC., PROHIBITED; EXCEPTION**

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188-25 **REPEALED**

188-26 - 28 **REPEALED**

188-28.5 **REPEALED**

188-29 **REPEALED**

188-29.1 **REPEALED**

188-30 **REPEALED**

188-30.2 **REPEALED**

188-30.5 **REPEALED**

188-31 **PERMITS TO TAKE AQUATIC LIFE FOR AQUARIUM PURPOSES**

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188-34 **FISHING IN HONOLULU HARBOR, HILO BAY, RESTRICTED**

188-35 **FISHING IN CERTAIN WATERS**

188-36 **HAWAII MARINE LABORATORY REFUGE**

188-37 **FISHING IN THE NORTHWESTERN HAWAIIAN ISLANDS**

188-38, 39 **REPEALED**

188-40 **REPEALED**

188-41 **REPEALED**

188-42 **REPEALED**

188-42.5 **HIHIWAI, HAPAWAI, AND OPAE KALA'OLE SELLING PROHIBITED**

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188-46 **REPEALED**

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188-50 **LICENSE; APPLICATION; FEES; RESTRICTIONS**

188-51-52.5 **REPEALED**

188-53 **FISHING RESERVES, REFUGES...PUBLIC FISHING AREAS**

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PART I. FISHING RIGHTS

§188-1 to 14 **REPEALED**. L 1985, c 94, §7.

PART II. FISHING REGULATIONS, GENERALLY

Cross References

Nonapplicability of fishing regulations to patients of Kalaupapa Settlement, see §326-29.

§§ 188-21, 22 REPEALED. L 1981, c 85, §§31, 32.

§188-22.5 State marine waters. As used in this chapter, state marine waters shall be defined as extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary. [L 1990, c 126, §2]

§188-22.6 Designation of community based subsistence fishing area. (a) The department of land and natural resources may designate community based subsistence fishing areas and carry out fishery management strategies for such areas, through administrative rules adopted pursuant to chapter 91, for the purpose of reaffirming and protecting fishing practices customarily and traditionally exercised for purposes of native Hawaiian subsistence, culture, and religion.

(b) Proposals may be submitted to the department of land and natural resources for the department's consideration. The proposal shall include:

- (1) The name of the organization or group submitting the proposal;
- (2) The charter of the organization or group;
- (3) A list of the members of the organization or group;
- (4) A description of the location and boundaries of the marine waters and submerged lands proposed for designation;
- (5) Justification for the proposed designation including the extent to which the proposed activities in the fishing area may interfere with the use of the marine waters for navigation, fishing, and public recreation; and
- (6) A management plan containing a description of the specific activities to be conducted in the fishing area, evaluation and monitoring processes, methods of funding and enforcement, and other information necessary to advance the proposal.

Proposals shall meet community based subsistence needs and judicious fishery conservation and management practices.

(c) For the purposes of this section:

- (1) "Native Hawaiian" means any descendant of the races inhabiting the Hawaiian islands prior to 1778; and
- (2) "Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing. [L 1994, c 271, § 1]

Note

Subsistence fishing pilot project (expires July 1, 1997). L 1994, c 271.

§188-23 Possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited; exception. (a) It is unlawful to possess or use on or near state waters, any explosives, blasting fuse caps, electrofishing devices, or any source of

electrical energy with appurtenant devices for the introduction of electricity into the water for the purpose of taking aquatic life, except under the terms and conditions of a permit first obtained by the user from the department. The department may issue permits for the use of electrofishing devices and explosives consistent with other legal requirements.

(b) It is unlawful to deposit in, permit to pass into, or place where it can pass into the state waters for the purpose of taking aquatic life any of the following:

- (1) Any petroleum, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum or carbonaceous material or substance
- (2) Hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox and Purex, and bleaching powders;
- (3) Preparations containing rotenone, tephrosin, or plant materials from *Barringtonia asiatica*, *Cocculus ferrandianus*, *Hura crepitans*, *Piscidia erythrina*, *Tephrosia purpurea*, *Wikstroemia*; and
- (4) Any other substance or material deleterious to aquatic life; except under the terms and conditions of a permit first obtained by the user from the department.

The department may issue permits to allow the possession of stated amounts of these substances poisonous to aquatic life if the department deems the amount in possession is for legitimate purposes or in quantities too small to harm aquatic life.

The possession of these substances without a permit by any person on or near the water where fish can be taken, or aboard any fishing vessel or boat is prima facie evidence of a violation of this section.

The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation.

Nothing in this section shall be held or construed to be an amendment of the rules of the department of transportation. [L 1888, c 30, §1; RL 1925, §761; am L 1925, c 41, §2; RL 1935, §366; RL 1945, §1221; RL 1955, §21-54; HRS §188-23; am L 1981, c 85, §33; am L 1982, c 147, §9]

§188-24 REPEALED. L 1981, c 85, §34.

§188-25 REPEALED. L 1999, c 85, §5.

§§ 188-26, 27 REPEALED. L 1981, c 85, §§36, 37.

§188-28 REPEALED. L 1977, c 129, §3.

§188-28.5 REPEALED. L 1999, c 85, §6.

§188-29 REPEALED. L 1999, c 85, §7.

§188-29.1 REPEALED. L 1999, c 85, §8.

§188-30 REPEALED. L 1999, c 85, §9.

§188-30.2 REPEALED. L 1999, c 85, §10.

§188-30.5 REPEALED. L 1999, c 85, §11.

§188-31 Permits to take aquatic life for aquarium purposes. (a) Except as prohibited by law, the department, upon receipt of a written

application, may issue an aquarium fish permit, not longer than one year in duration, to use fine meshed traps, or fine meshed nets other than throw nets, for the taking of marine or freshwater nongame fish and other aquatic life for aquarium purposes.

(b) Except as prohibited by law, the permits shall be issued only to persons who can satisfy the department that they possess facilities to and can maintain fish and other aquatic life alive and in reasonable health.

(c) It shall be illegal to sell or offer for sale any fish and other aquatic life taken under an aquarium fish permit unless those fish and other aquatic life are sold alive for aquarium purposes.

The department may adopt rules pursuant to chapter 91 for the purpose of this section.

(d) For the purposes of this section:

- (1) "Aquarium purposes" means to hold salt water fish, fresh water nongame fish, or other aquatic life alive in a state of captivity as pets, for scientific study, or for public exhibition or display, or for sale for these purposes; and
- (2) "Aquarium fish permit" means a permit issued by the board for the use of fine mesh nets and traps to take salt water fish, fresh water nongame fish, or other aquatic life for aquarium purposes. [L 1953, c 124, §§1, 2, 3; RL 1955, §21-64; am L 1961, c 30, §§1, 2 and c 132, §2; HRS §188-31; am L 1979, c 154, §1; am imp L 1984, c 90, §1; am L 1992, c 96, §2]

§188-31.5 Aquarium fish for export; monthly count. The department of land and natural resources shall adopt rules in accordance with chapter 91 to monitor the aquarium fish catch report and fish dealer's report for export of aquarium fish taken from the waters of the State for aquarium purposes pursuant to section 188-31. A monthly count of the quantities taken of each individual species of aquarium fish exported shall be reported to the board. [L 1989, c 319, §1]

§§ 188-32, 33 REPEALED. L 1981, c 85, §§41, 42.

§188-34 Fishing in Honolulu harbor, Hilo bay, restricted. It is unlawful to take or kill fish by means of any draw, drag, or seine net in the waters of the harbor of Honolulu; provided that commercial marine licensees as defined in chapter 187A may take bait fish by means of any draw, drag, or seine net during periods scheduled by the harbor master.

It is unlawful to take or kill fish by means of any net in the waters of that portion of the bay of Hilo bounded by the breakwater, a line from the outer end of the breakwater to Alealea Point, and the shoreline from Alealea Point to the inshore end of the breakwater, provided that commercial marine and pond operators with appropriate licenses issued by the department of land and natural resources may take bait fish or pua, or persons may use throw net, opae net, crab net, or nehu net not longer than fifty feet to take nehu for family consumption or bait purposes. [L 1911, c 38, §1; RL 1925, §769; RL 1935, §383; am L 1941, c 223, §1; RL 1945, §1230; RL 1955, §21-67; am L 1961, c 110, §1; HRS §188-34; am L 1981, c 85, §43; am L 1986, c 339, §11; am L 1987, c 131, §1]

§188-35 Fishing in certain waters. (a) Except as otherwise provided in this section, it is unlawful for any person to fish in or take aquatic life from the waters:

- (1) Of the Waikiki reclamation canal, Oahu;

- (2) Of the drainage canal constructed in connection with Kapiolani Boulevard, Oahu;
- (3) Of the Kapalama drainage canal, Oahu;
- (4) Off Heeia-Kea wharf, Oahu;
- (5) Within that portion of Waialua Bay delineated on the seaward boundary by lines drawn one hundred yards seaward of and parallel to the Haleiwa Harbor Breakwater and one hundred yards seaward of and parallel to the Haleiwa Beach Groin including the extension to the intercept of these lines and the inland boundary consisting of a line drawn ten yards downstream of and parallel to the Anahulu Bridge, Oahu;
- (6) Within that portion of Pokai Bay including the Pokai Boat Harbor and the Waianae Small Boat Harbor delineated on the seaward boundary by a straight line drawn from Kaneilio Point to Lahilahi Point with the northwestern boundary to be delineated by a straight line extending from the southernmost tip of the point immediately seaward of Waianae High School on a southwest azimuth to the intercept of the seaward boundary extending from Kaneilio Point to Lahilahi Point, Oahu; and
- (7) Of the Kapaa and Waikaea canals, Kauai.

(b) With reference to any of the places or areas named above, any person may, subject to applicable laws and rules, fish with one line, or one rod and line, provided the line shall not have more than two hooks; or may take crabs with not more than ten nets, provided the nets shall not exceed two feet in diameter; or may take shrimps for bait purposes only with a hand net, provided the net shall not exceed three feet in any dimension; provided that in the Waikiki reclamation canal any person may take up to fifty tabai or mosquito fish, or o'opu akupa, or tilapia or any combination thereof, per day, for noncommercial purposes only, with a single small mesh net, provided that the net including any handle and other attachment thereto shall not exceed three feet in any dimension.

(c) An owner or operator of a fish pond may take pua or other small fish, using nets, with a license obtained from the department of land and natural resources and under rules the department may adopt, for the purpose of stocking the fish pond.

(d) Commercial marine licensees, with a license from the department of land and natural resources, may take nehu, iao, or any other species of baitfish as authorized by section 188-45, using nets for bait purposes only.

(e) The department may issue licenses at its discretion and at any time may revoke any or all licenses when, in its judgment, the action is necessary to preserve the stock of fish in the canals or waters. [L 1923, c 41, §§1, 2; RL 1925, §770; RL 1 935, §384; am L 1943, c 26, § 1 and c 195, §§ 1, 2; RL 1945, § 1231; am L 1947, c 19, §1; am L 1949, c 154, §1; am L 1951, c 58, §1; am L 1955, c 118, §1; RL 1955, §21-68; am L 1957, c 230, §1; am L Sp 1959 2d, c 1, §22; am L 1961, c 29, §1 and c 132, §2; HRS §188-35; am L 1974, c 169, §1; am L 1978, c 164, §1; am L 1979, c 38, §1; am L 1981, c 85, §44; am L 1983, c 145, §1; am L 1987, c 21, §1; am L 1989, c 101, §1; am L 1993, c 80, §1]

Cross Reference

Rulemaking, see chapter 91.

§188-36 Hawaii marine laboratory refuge.

It is unlawful for any person within the Hawaii marine laboratory refuge to take any aquatic life. Nothing in this section shall apply to any officer, faculty member, employee, or student of the University of Hawaii or licensee of the board of regents of the University of Hawaii, while employed in catching or taking aquatic life for scientific purposes.

The Hawaii marine laboratory refuge consists of the reefs and bay waters surrounding the island of Moku-o-loe located in Kaneohe Bay, island of Oahu, from the high water mark on the island extending outward to "twenty-five feet beyond the outer edges of the reefs."

All laws enacted for the protection of aquatic life or wildlife shall likewise apply to the Hawaii marine laboratory refuge, except that no person or persons, other than those designated by this section, shall be authorized to catch or take aquatic life in the refuge.

The Hawaii marine laboratory refuge shall continue only as long as the regents of the University of Hawaii maintain the Hawaii marine laboratory on the island of Moku-o-loe, island of Oahu. [L 1953, c 85, §§1, 2; RL 1955, §2169; HRS §188-36; am L 1981, c 85, §45]

§188-37 Fishing in the Northwestern Hawaiian Islands. (a) The department of land and natural resources may adopt rules relating to the taking of marine life in the Northwestern Hawaiian Islands, where, in the judgment of the department the action will not deplete the stocks of marine life in the area; the rules may include open and closed seasons, size limits, methods and appliances, and establishment of permits for taking marine life.

(b) Those islands, reefs, and shoals, as well as their respective appurtenant reefs and territorial waters, of the Hawaiian Islands chain beginning and including Nihoa Island to and including Kure Island shall be referred to as the Northwestern Hawaiian Islands.

(c) The department may issue permits to those persons with a valid commercial marine license issued pursuant to section 189-2 who own or operate a vessel deemed capable by the department for effectively taking marine life within the Northwestern Hawaiian Islands, and whenever the department deems necessary, it may limit the number of permits issued to take marine life in any particular area and such limitation shall be on the basis of the order of application for permits. Issuance of permits shall be limited to persons utilizing methods or appliances approved by rule of the department, which need not be legal elsewhere within the State, and these permittees may take species of marine life, when and as approved by rule of the department. The fee for the Northwestern Hawaiian Islands taking permit shall be established by the department by rules adopted in accordance with chapter 91. The department shall set the fee in an amount that, when combined with the fees provided for in sections 188-50 and 189-2, shall be reasonably necessary to supplement the funding for:

(1) Enforcement of this chapter and section 189-2; and

(2) The activities set forth in section 187A-11.

The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation. [L 1953, c 57, §§1, 2; RL 1955, §21-70; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §188-37; M L 1978, c 97, §1; AM L 1981, c 85,

§46; am L 1988, c 117, §1]

Note

The fees required by this section shall remain in effect until the effective date of the rules required by 1. 1988, c 117, §4.

§§ 188-38, 39 REPEALED. L 1981, c 85, §§47, 48.

§188-40 REPEALED. L 1999, c 85, §12.

§188-41 REPEALED. L 1999, c 85, §13.

§188-42 REPEALED. L 1981, c 85, §49.

§188-42.5 Hiihiwai, hapawai, and opae kala'ole selling prohibited. It shall be unlawful for any person at any time to sell or offer for sale any hiihiwai, hapawai, and opae kala'ole taken from any waters within the jurisdiction of the State. [L 1993, c 48, § 1]

§188-43 Hinana and oopu, taking of, prohibited. It is unlawful for any person to fish for, or attempt to take any of the fish known as hinana or oopu, by means of traps or weirs. [L 1937, c 41, §§1, 2; RL 1945, §1235; RL 1955, §21-76; HRS §188-43; am L 1981, c 85, §50]

§188-44 Mullet, catching prohibited, when; exceptions. (a) The department may issue a license to any owner or operator of a fish pond to lawfully catch the young mullet known as pua during the closed season, for the purpose of stocking the owner's or operator's pond, and lawfully sell pond raised mullet during the closed season.

(b) The department may adopt rules pursuant to chapter 91 necessary for the purpose of this section and to set reasonable fees. [L 1888, c 58, §§ 1, 2, 3; am L 1903, c 8, §2; RL 1925, §§763, 764, 765; am L 1925, c 193, §§ 1, 2, 3; am imp L 1927, c 264; am L 1933, c 174, §2; RL 1935, §§370, 371; am L 1935, c 85, § 1; RL 1945, § 1236; RL 1955, §21-77; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §188-44; am L 1981, c 85, §51; am imp L 1984, c 90, §1; am L 1991, c 184, §3; am L 1992, c 163, §1; am L 1999, c 85, §1]

Note

The fees required by this section shall remain in effect until the effective date of the rules required by L 1991, c 184, §5.

Cross References

Modification of fees, see §92-28.

§188-45 Licenses for nehu, iao, and other baitfish. The department may issue to commercial marine licensees, as defined in chapter 187A, licenses to take nehu, iao, or any other species for use as bait only. The department may adopt rules pursuant to chapter 91 for the purposes of this section. The licenses may be issued by the department upon terms and conditions the department may deem necessary to conserve the supply of the fish within state waters. The license may be summarily revoked for a violation of any term or condition of the license, and any or all licenses may be revoked summarily whenever, in the judgment of the department, the action is necessary for the conservation of the fish. [L 1929, c 206, §§ 1, 2; am L 1931, c 258, §1; am L 1933, c 54, §1; RL 1935, §390; am L 1943, c 54, §1; RL 1945, §1237; am L 1947, c 179, §1; RL 1955, §21-78; am L Sp 1959 2d, c 1, §22; am L 1961, c 101, §1 and c 132, §2; HRS §188-45; am L 1974, c 222, §1; am L 1981, c 85, §52; am imp L 1984, c 90, §1; am

L 1986, c 339, §12; am L 1999, c 85, §2]

§ 188-46 REPEALED. L 1999, c 85, §14.

§§ 188-47 to 49 REPEALED. L 1981, c 85, §§54 to 56.

§ 188-50 License; application; fees; restrictions. (a) It is unlawful for any person, except children below nine years of age, to fish, take, or catch any introduced fresh water game fish without first obtaining a license. Children exempt by this section may fish, provided they are accompanied by a licensed person. The department of land and natural resources may adopt rules pursuant to chapter 91 necessary for the purposes of this chapter and to set fees for fresh water game fish fishing.

(b) The licenses shall be issued by agents of the department of land and natural resources upon written application in such form as may be prescribed by the department together with payment of a fee. The application shall require a statement under oath of the applicant's name, address, domicile or residence, length of residence in the State, age, race, height, weight, and color of hair and eyes. All licenses shall expire and become void one year from the date of issuance, except the tourist license which shall expire and become void thirty days after the date of issuance; provided that no fees or charges shall be made for licenses issued to persons sixty-five years of age and older. A duplicate license may be issued upon affidavit that the original license has been lost or destroyed and upon the payment of a duplicate license fee. The fees for licenses and duplicate licenses shall be established by the department by rules adopted in accordance with chapter 91. The department shall set the fees in an amount that, when combined with the fees provided for in sections 188-37 and 189-2, shall be reasonably necessary to supplement the funding for:

(1) Enforcement of this chapter and section 189-2; and

(2) The activities set forth in section 187A-11.

(c) No person to whom a license has been issued under this section shall permit any other person to carry, display, or use the license for any purpose. Every person to whom a license has been issued under this section shall show the license upon demand of any officer authorized to enforce the fishing laws of the State. No person shall refuse any officer the examination or inspection of any bag or container of any kind used to carry fish or any vehicle or conveyance used to transport fish.

The department, upon written application, may issue a permit to a club or group of minors, not less than five in number, for unlicensed fishing where such activity will be supervised by responsible adults. All adults accompanying the excursions, however, shall themselves be licensed. The application shall state the area to be visited, the dates for the excursion, the name of the organization or group, and shall be signed by an adult advisor of the group. The permits shall expire and become void thirty days after issuance. The department may determine other terms and conditions of the permits.

(d) Where a bag limit is specified for the catching of fresh water fish, each licensee may take only one bag per day. This restriction to one bag applies to each minor participating in unlicensed group excursions for which permits have been issued under this section. The catch of a child below the age of nine years shall be

deemed part of the catch of the licensed adult accompanying the child.

The department may revoke any license for any infraction of the terms and conditions of the license. Any person whose license has been revoked shall not be eligible to apply for another license until the expiration of one year from the date of revocation. [*L Sp 1949, c 57, §2; am L 1955, c 29, §2; RL 1955, §21-83; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §188-50; am L 1974, c 224, §1; am L 1981, c 85, §57; am imp L 1984, c 90, §1; am L 1988, c 117, §2]*

Note

The fees required by this section shall remain in effect until the effective date of the rules required by L 1988, c 117, §4.

Cross Reference

Modification of fees, see §92-98.

§§ 188-51, 52 REPEALED. L 1981, c 85, §§58, 59.

§ 188-52.5 REPEALED. L 1985, c 94, §8.

§ 188-53 Fishing reserves, refuges, and public fishing areas. (a) For the purposes of managing, preserving, protecting, conserving, and propagating introduced freshwater fishes, and other freshwater or marine life, the department of land and natural resources may establish, maintain, manage, and operate freshwater or marine fishing reserves, refuges, and public fishing areas in areas under its control as it may deem desirable and may enter into agreements for the taking of control of privately owned waters, lands, or fisheries for such purposes. The department may make, adopt, and amend rules and may issue permits as it deems necessary for managing the fishing reserves, refuges, public fishing areas, and other waters or lands under the jurisdiction or control of the State.

(b) It is unlawful for any person to enter any area established under this section without first obtaining a permit from the department, if permits are required, or to violate any rule adopted by the department governing same.

The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation. [*L 1953, c 58, pt of §1; RL 1955, §21-86; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §188-53; am L 1981, c 85, §60]*

Cross Reference

Rulemaking procedure, see chapter 91.

§§ 188-54, 54.1, 54.2, 55, and 56 REPEALED. L 1981, c 85, §§61 to 65.

§ 188-57 Licenses for certain crustaceans.

(a) Any commercial marine dealer may sell, or any hotel, restaurant, or other public eating house may serve, during the closed season, Kona crabs or lobsters lawfully caught during the open season by first procuring a license to do so.

(b) The department may adopt rules pursuant to chapter 91 necessary for the purpose of this chapter and to set fees for selling or serving Kona crab and lobster during the closed season. [*L 1925, c 72, §§1, 2, 3; RL 1935, §396; am L 1935, c 107, §1; RL 1955, §21-90; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2, HRS §188-57; am L 1977, c 55, §1; am L 1981, c 85 §66; am L 1990, c 12, §1; am L 1991, c 184, §3; am L 1992, c 163, §2; am L 1999, c 85, §3]*

Note

The fees required by this section shall remain in effect until the effective date of the rules required by L 1991, c 184, §5.

Cross Reference

Modification of fees, see §92-28.

§188-58 REPEALED. L 1999, c 85, §15.

§§188-59 to 67 REPEALED. L 1981, c 85, §§68 to 76.

§188-68 Permits for coral and rock with marine life attached. The department may issue permits, as authorized by this section, section 187A-6, chapter 183C, or under rules adopted pursuant to chapter 91 necessary for collecting live stony corals or marine life visibly attached to rocks placed in the water for a commercial purpose. [L 1988, c 374, §1; am L 1990, c 69, §2; am L 1991, c 184, §4; am L 1993, c 256, §3; am L 1999, c 85, §4]

§188-70 Penalties. (a) Any person violating any provision of this chapter, excepting section 188-23, or any rule adopted pursuant thereto, is guilty of a petty misdemeanor and, in addition to any other penalties, shall be fined not less than:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense; and
- (3) \$500 for a third or subsequent offense.

(b) Any person violating section 188-23, is guilty of a class C felony and upon conviction thereof, shall be sentenced pursuant to chapter 706; provided that the court, in addition to any term of imprisonment or any other terms and conditions of probation, shall order the defendant to pay a fine of not less than \$1,000. Notwithstanding section 706-669 and any other law to the contrary, any person in violation of subsection (b), as a first offense, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole for thirty days. Repeat offenders shall be sentenced pursuant to chapter 706.

(c) The fines specified in this section shall not be suspended or waived. [am L 1988, c 374, §2; am L 1993, c 256, §4; am L 1999, c 195, §6]

§188-71 Harassment of fishermen; prohibition. (a) No person shall intentionally prevent or attempt to prevent the lawful taking of fish by a person licensed pursuant to section 188-50 by:

- (1) Placing the person's self in a location in which human presence may affect the behavior of fish to be taken or the feasibility of taking such fish;
- (2) Creating a visual, aural, olfactory, or physical stimulus to affect the behavior of fish to be taken;
- (3) Affecting the condition or placement of personal property intended for use in the taking; or
- (4) Obstructing the person's access to areas in which the person intends to lawfully take fish.

(b) No person shall enter or remain upon public lands or waters, or upon private lands or waters, without permission of the owner or the owner's agent, with intent to violate this section.

(c) The maximum penalty for violation of subsection (a) or (b) is a fine of \$500, thirty days' imprisonment, or both. [L 1995, c 186]

CHAPTER 188E HAWAII FISHERIES COORDINATING COUNCIL

Chapter 188E REPEALED. L 1996, c 127. §1

Chapter 189F [L 1998, c 306, §§1, 2, 3, 4]

SECTION 1. The legislature finds that regional management of nearshore marine resources is an effective approach to further the policies and objectives of the Hawaii ocean resources management plan. This has been proven through the experience in the United States and in other countries, a notable example being the Great Barrier Reef Marine Park.

International experience has proven the benefits of establishing areas under management plans that integrate the management of activities and resource use so as to sustain the quality and health of living and non-living marine resources. This includes ensuring that management of fisheries and ocean recreation activities is coordinated to enhance the effectiveness of resource protection.

Scientific research and experience in regional management support the premise that establishing a minimum of thirty per cent of coastal waters as fish replenishment areas will be effective in enhancing and sustaining the stocks of nearshore marine resources.

Regional ocean management is recognized in the Hawaii state statutes as a valuable management tool. These statutes authorize the department of land and natural resources to create fishery management areas, marine life conservation districts, and ocean recreation management areas. The lead agency for these management areas is the department of land and natural resources through its divisions of aquatic resources and boating and ocean recreation.

Within these designated areas, the legislature has granted to the department of land and natural resources expanded rule making authority to separate incompatible uses and protect significant resources. This authority includes limiting access to fisheries in fishery management areas, and restricting types of ocean recreation activities in ocean recreation management areas.

The department of land and natural resources has identified the highest priority areas with significant pressures from resource exploitation and conflicts of use. Two of the top three areas, namely Kaneohe bay and Hanauma bay, are already under comprehensive integrated ocean management plans. The third area, the west coast of Hawaii island, has no integrated regional management plan.

The legislature finds that the west coast of Hawaii island has some of the finest coral reefs in the world. It is ranked as the top overall dive destination by dive tourists. These coral reefs are enjoyed by divers from the community as well as from the recreational dive industry. The reefs also provide essential habitat for fish and other marine life that are caught by recreational, commercial, and subsistence fishers.

As human population grows, increasing fishing pressure and environmental stresses from activities on or adjacent to the reefs are causing degradation of the reef environment. Collection of reef fish for aquarium purposes has caused a depletion of these fish in localized nearshore reef areas, even though scientists argue that the overall population of these reef fish is not significantly affected by collection efforts. Impacts from boat anchors and novice divers have caused coral damage in some of

these nearshore reef areas as well. In addition, the use of set nets has caused a significant impact on reef fish populations in certain areas. Finally, land use on the adjacent coastal areas has, in some cases, caused additional runoff that has affected coral reef areas.

Because of these pressures, the legislature finds that it is in the best interests of the resources and the community for the department of land and natural resources to establish a regional fishery management area in West Hawaii to set aside areas for fish replenishment, as well as regulate impacts from other users.

The legislature further finds that the user conflict and localized resource depletion caused by aquarium fish collectors in West Hawaii are serious and ongoing concerns. To that end, this Act directs the department of land and natural resources to take immediate action to set aside at least thirty per cent of these coastal waters as areas where aquarium fish collecting is prohibited.

The legislature recognizes the scientific support for establishing fish replenishment areas where no fishing is allowed as an effective means to enhance stocks of sport fish and food fish. This Act directs the department of land and natural resources to designate some areas as fish reserves, where no fishing of reef dwelling fish is allowed. More time is allowed for this step to enable the department to work closely with the fishing community to gain its support.

The legislature believes that this integrated regional management approach will be effective in enhancing and sustaining all nearshore marine resources for fishers, divers, and all users of these waters.

The purpose of this Act is to establish a West Hawaii regional fisheries management area for effective management of fishery activities in this coastal area, to enhance nearshore resources, and to minimize conflicts of use.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

" CHAPTER 188F
WEST HAWAII REGIONAL FISHERY
MANAGEMENT AREA

§189F-1 Definitions. As used in this chapter, unless the context requires otherwise:

"Department" means the department of land and natural resources.

"Management area" means the West Hawaii regional fishery management area established in section 188F-2

"Plan" means the West Hawaii regional fishery management plan established in section 188F-4.

§188F-2 West Hawaii regional fishery management area; establishment. The department of land and natural resources shall establish the West Hawaii regional fishery management area to improve the management of consumptive and nonconsumptive uses of aquatic resources encompassing the regional ocean area on the west coast of Hawaii Island, from Ka Lae, Kau (South Point) to Upolu Point, North Kohala, but not including Kawaihae commercial harbor.

§188F-3 West Hawaii regional fishery management area; purpose. The West Hawaii regional fishery management area shall be to:

- (1) Ensure the sustainability of the State's nearshore ocean resources;

- (2) Identify areas with resource and use conflicts;
- (3) Provide management plans as well as implementing regulations for minimizing user conflicts and resource depletion, through the designation of sections of coastal waters in the West Hawaii regional fishery management area as fish replenishment areas where certain specified fish harvesting activities are prohibited, and other areas where anchoring and ocean recreation activities are restricted;
- (4) Establish a system of day-use mooring buoys in high-use coral areas and limit anchoring in some of these areas to prevent anchor damage to corals;
- (5) Identify areas and resources of statewide significance for protection;
- (6) Carry out scientific research and monitoring of the nearshore resources and environment; and
- (7) Provide for substantive involvement of the community in resource management decisions for this area through facilitated dialogues community residents and resource users.

§188F-4 West Hawaii regional fishery management area plan. The department shall develop a West Hawaii regional fishery management area plan that identifies and designates appropriate areas of the management area as follows:

- (1) Designates a minimum of thirty per cent of coastal waters in the Hawaii regional fishery management area as fish replenishment areas in which aquarium fish collection is prohibited;
- (2) Establishes a day-use mooring buoy system along the coastline of the West Hawaii regional fishery management area and designates some high-use areas where no anchoring is allowed;
- (3) Establishes a portion of the fish replenishment areas as fish reserves where no fishing of reef-dwelling fish is allowed; and
- (4) Designates areas where the use of gill nets as set nets shall be prohibited.

§188F-5 Review. A review of the effectiveness of the West Hawaii regional fishery management area plan shall be conducted every five years by the department of land and natural resources, in cooperation with the University of Hawaii. The department shall submit a report of its findings and recommendations based on review to the legislature no later than twenty days before the convening of the regular session following the review.

§188F-6 Rules. The department shall adopt rules to effectuate the purposes of this chapter in accordance with chapter 91."

SECTION 3. As part of the West Hawaii regional fishery management area plan, the department of land and natural resources shall adopt rules in accordance with chapter 91, Hawaii Revised Statutes, as follows:

- (1) By October 1, 1998, designate a minimum of thirty per cent of coastal waters in the West Hawaii regional fishery management area as fish replenishment areas in which aquarium fish collection is prohibited. This area would include existing no-

- collecting areas;
- (2) By July 1, 1999, establish a day-use mooring buoy system along the coastline of the West Hawaii regional fishery management area and designate some high-use areas where no anchoring is allowed;
 - (3) By October 1, 1999, establish a portion of the fish replenishment areas as fish reserves where no fishing of reef-dwelling fish is allowed. These reserves will extend out to a depth of two hundred meters, the edge of the insular shelf, or as otherwise designated by the department; and
 - (4) By July 1, 2000, designate areas where the use of gill nets as set nets shall be prohibited.

The department of land and natural resources shall identify the specific areas and restrictions after close consultation and facilitated dialogue with working groups of community members and resource users.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 20, 1998.)

CHAPTER 189 COMMERCIAL FISHING

Part I. License and Regulation Section

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 189-1.5 State marine waters
 189-2 Commercial marine license
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 PROHIBITION
 189-3 MONTHLY CATCH REPORT
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 189-5 ALIENS NOT ADMITTED TO UNITED STATES
 189-6 MARINE LIFE FROM WATERS NOT WITHIN
 STATE JURISDICTION DURING CLOSED SEASONS
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PART I. LICENSE AND REGULATION

§189-1 REPEALED. L 1981, c 85, §78.

§189-1.5 State marine waters. As used in this chapter, state marine waters shall be defined as extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary [*L 1990, c 126, §3*]

§189-2 Commercial marine license. (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license as provided in this section.

(b) Additionally, any person providing vessel charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine license.

(c) The department may adopt rules pursuant to chapter 91 necessary for the purpose of this section and to set fees for commercial marine licensing.

(d) The fees for commercial marine licenses

and duplicate commercial marine licenses shall be established by the department by rules adopted in accordance with chapter 91. The department shall set the fees in an amount that, when combined with the fees provided for in sections 188-37 and 188-50, shall be reasonably necessary to supplement the funding for:

(1) Enforcement of this section and chapter 188; and

(2) The activities set forth in section 187A-11.

(e) The department shall suspend, shall refuse to renew, reinstate, or restore, or shall deny any license issued under this section if the department has received certification from the child support enforcement agency pursuant to section 576D-13 that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. The department shall issue, renew, reinstate, or restore such a license only upon receipt of authorization from the child support enforcement agency, the office of child support hearings, or the family court. [L 1929, c 187, §2; RL 1945, § 1257; am L 1947, c 39, §2; am L 1949, c 272, §2; am L 1955, c 96, §3; RL 1955, §21-111; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §189-2; am L 1977, c 128, §2; am L 1981, c 85, §79; am L 1985, c 242, §2; am L 1988, c 117, §3, am L 1998, c 83, §1; am L 1999, c 9, § 1.]

Note

The fees required by this section shall remain in effect until the effective date of the rules required by L 1988, c 117, §4.

Cross Reference

Modification of fees, see §92-28.

Attorney General Opinion

Public disclosure of commercial marine licenses not permitted, but disclosure of some information allowed. Att. Gen. Op. 85-23.

§189-2.5 Longline fishing; description; prohibition. (a) For the purpose of this section, longline fishing means fishing conducted with gear consisting of at least one mainline over one nautical mile in length, to which is attached a number of branchlines with baited hooks and which is suspended below the surface of the ocean by floatlines attached to surface floats.

(b) It is unlawful to engage in longline fishing or to sell or offer for sale, any marine life taken within the boundaries of the State's territorial sea.

(c) Pursuant to and in cooperation with the joint federal-state Western Pacific Regional Fishery Management Council (WPRFMC also known as WESPAC), of which Hawaii is a member, the State adopts and incorporates by reference the rules adopted by WPRFMC through the National Oceanic and Atmospheric Administration (NOAA) for the management and regulation of longline fishing activities.

- (1) Accordingly, it is unlawful for any person to possess, land, sell, or offer for sale any marine life taken by longline fishing gear which is prohibited by or in violation of rules properly adopted by WPRFMC through NOAA, which by incorporation and acceptance are also the law of Hawaii.
- (2) Any person or any fishing vessel fishing with gear of at least one mainline over one nautical mile in length within the area prohibited by rules properly adopted by WPRFMC through NOAA and incorporated by the State shall be in violation of this section.

(d) The State shall have authority to enforce

this section and the rules adopted by WPRFMC through NOAA and incorporated by reference into state law within:

(1) The State's marine waters as defined in section 189-1.5; and

(2) Those areas under WPRFMC's jurisdiction where properly adopted rules have been established to govern, regulate, and manage longline fishing activities; provided that WPRFMC shall have accepted and entered into a mutual working agreement with the State to carry out these rules, including the joint deputizing of law enforcement officials.

(e) The commercial marine license of any person convicted of violating this section shall be revoked and penalties pursuant to section 199-7, including equipment and gear seizure and forfeiture, shall be assessed. Any person whose license has been revoked shall not be eligible to apply for another license until the expiration of one year from the date of revocation. [L 1991, c 161, §1]

§189-3 Monthly catch report. (a) Upon the demand of the department, every commercial marine licensee shall furnish to the department a report or reports with respect to the marine life taken and any other information the department may require for the purposes of this section.

(b) Any information submitted to the department by any person in compliance with any requirement under this section shall be confidential and shall not be disclosed, except when required under court order or pursuant to subpoena issued by the department of the attorney general, or with the prior written consent of the person submitting the information, or under cooperative agreements with government agencies of the United States for exchange and use of the information specifically to manage marine life. The department, by rule, may establish procedures necessary to preserve the confidentiality, except that the department may release or make public any of the information in the aggregate or summary form which does not directly or indirectly disclose the identity of any person who submits information. [L 1929, c 187, §4; RL 1945, §1258; am L 1947, c 39, §3; am L 1949, c 272, §3; am L 1955, c 96, §4; RL 1955, §21-112; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §189-3; am L 1981, c 85, §80; am L 1985, c 113, §1; am L 1999, c 9, § 2.]

§189-4 Penalties. (a) Any person violating any of the provisions of this chapter for which a penalty is not otherwise provided, or any rule of the department adopted thereunder, shall be guilty of a petty misdemeanor and punishable as provided in subsection (b); provided that in the case of a corporation violating any of the provisions only the fine shall be imposed, but any officer of the corporation who wilfully procures or permits the violation of the provisions by the corporation shall be punishable as in the case of an individual violating the same.

(b) The punishment, in addition to any other penalties, shall be a fine not less than:

(1) \$250 for a first offense;

(2) \$500 for a second offense; and

(3) \$1,000 for a third or subsequent offense.

(c) The fines shall not be suspended or waived. [L 1929, c 187, §5; RL 1945, §1259; am L 1947, c 39, §5; am L 1949, c 272, §5; am L 1955, c 96, §5; RL 1955, §21-114; HRS §189-4; am L 1981, c 85, §81; am L 1999, c 195, § 7.]

§189-5 Aliens not admitted to United States. It is unlawful for any person who has not been lawfully admitted to the United States to engage in taking marine life for commercial purposes in the waters of the State. The term "United States" as used in this section, includes the several states and the territories and possessions of the United States. [L 1929, c 187, §7; RL 1935, §336; RL 1945, §1260; am L 1947, c 39, §6; am L 1955, c 96, §6; RL 1955, §21115; HRS §189-5; am L 1981, c 85, §82]

§189-6 Licenses for marine life from waters not within state jurisdiction. Any other provision of law to the contrary notwithstanding, wherever the possession or sale of marine life or products within the State is prohibited as for instance by a closed season, the prohibition shall not apply where the marine life or products have been taken from or caught outside of the waters of the State and the possession or sale has been licensed by the department of land and natural resources under rules adopted by the department. The department may make rules pursuant to chapter 91 governing the issuance, suspension, and revocation and all other terms of the licenses. In addition, the department may specify in the rules that any berried, undersized, or out-of-season lobsters taken from the waters of the northwestern Hawaiian islands may not be possessed and sold under authority of the license. [L 1929, c 187, §8; RL 1935, §337; RL 1945, §1261; am L 1947, c 39, §7; am L 1955, c 96, §7; RL 1955, §21-116; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §189-6; am L 1981, c 85, §83, am L 1999, c 234, §1]

§§ 189-7 to 9 REPEALED. L 1971, c 58, §2.

§189-10 Commercial marine dealers. (a) The department may require a license of any commercial marine dealer to sell or offer for sale, to purchase or attempt to purchase, to exchange, or to act as an agent in the transfer of, any marine life taken within the jurisdiction of the State for commercial purposes. It is unlawful for any commercial marine dealer to sell or offer for sale, to purchase or attempt to purchase, to exchange, or to act as an agent in the transfer of, any marine life taken within the jurisdiction of the State for commercial purpose, that is obtained from any person whom the department has required to have, but does not have, a valid commercial marine license, commercial marine dealer license, or other license or permit authorizing such sale, purchase, exchange, or transfer for commercial purpose.

(b) The department may require a license of any person to export any marine life taken within the jurisdiction of the State for commercial purpose.

(c) Upon the written demand of the department, a commercial marine dealer shall render to the department a true and correct statement showing the name of the commercial marine dealer; year; month; day; weight; number; value of each of the species of marine life purchased, transferred, exchanged, or sold during the previous month; name and current license number of the commercial marine licensee from whom the marine life was obtained; and such other information as the department may require.

(d) The department may require any term or condition of the licenses issued pursuant to this section, including, but not limited to, reports, fees and exemptions. The department may adopt rules pursuant to chapter 91 for the purposes of this

section. [L 1925, c 202, §1; am L 1929, c 115, §1; RL 1935, §380; RL 1945, §1265; am L 1945, c 24, §1; RL 1955, §21-122; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §189-10; am L 1981, c 85, §84; am L 1986, c 2, §1, am L 1997, c 307, §1]

§189-11 Receipts in duplicate. Every commercial marine dealer shall issue receipts to the person from whom marine life is obtained and shall provide the following information in the receipt:

- (1) The date of the issuance;
- (2) The name of the person to whom the receipt is issued;
- (3) The following information with respect to each of the varieties of marine life as the department shall require including:
 - (A) The weight in pounds of each of the varieties received;
 - (B) The numbers of marine life when they average a pound or more;
 - (C) The price per pound paid; and
 - (D) With regard to aquarium fish, regardless of weight, the number and species of the fishes; and
- (4) The signature of the dealer who issues the receipt.

Any dealer taking the dealer's own marine life or handling any marine life taken by commercial marine licensees working for or with the dealer, shall make out the same receipt, giving market price for the marine life as prevails on the date of receipt. A duplicate copy of this receipt shall be kept on file at the premise where the marine life was sold by the dealer issuing the same for a period of twelve months from the date of issuance, and the duplicate copy shall be available for inspection upon demand of any conservation officer authorized to enforce the laws of the State. [L 1925, c 202, §2; am L 1929, c 115, §2; RL 1935, §381; RL 1945, §1266; am L 1945, c 24, §2; RL 1955, §21-123; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §189-10; am L 1981, c 85, §85; am imp L 1984, c 90, §1; am L 1986, c 2, §2, am L 1997, c 307, §2]

§189-12 REPEALED. L 1981, c 85, §86.

§189-13 REPEALED. L 1999, c 195, §11.

Cross Reference

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

§189-14 Rights of entry, penalties. The department may board any vessel, whether commercial or non-commercial, capable of being used in taking marine life, or enter any place of business where marine life is sold, stored, processed, cooked, canned, or cured, for purposes of investigation and inspection, and inspect any and all books and records containing account of the marine life taken, bought, or sold.

Any person who fails to permit an inspection as provided in this section, or who refuses to produce any book or record containing any information of the marine life taken, bought, or sold, and any person who interferes with any officer or agent of the department in the performance of the officer's or agent's duty as authorized in this section, shall be guilty of a petty misdemeanor and punished as provided by section 189-4. [L 1929, c 235, §§1, 2; RL 1935, §338; RL 1945, §1268; RL 1955, §21-126; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §189-14; am L 1981, c 85, §87; am imp L 1984, c 90, §1; am L 1999, c 195, §8]

§189-15 Authority. The department of land and natural resources may promulgate and enforce rules concerning the use of fish aggregation devices deployed under the Statewide Fish Aggregating System. The rules may include provisions that prohibit attaching, mooring, or tying any boat or other watercraft to the fish aggregating devices, or boarding, defacing, damaging, removing or destroying such devices; provided that the department may engage in such activities as deemed necessary to enhance the fish aggregating system. [L 1981, c 80, pt of §2]

§189-16 REPEALED. L 1999, c 195, §12.

§189- Commercial fisheries special fund.

(a) There is established in the treasury of the State and administered by the department a commercial fisheries special fund.

(b) The following proceeds shall be retained by or transmitted to the department for deposit into the commercial fisheries special fund:

- (1) Moneys collected as fees for commercial fishing licenses and permits, use of public fishing grounds for commercial fishing purposes, and use of commercial fisheries-related facilities;
- (2) Moneys collected under the provision of any law or rule related to the importation, rearing of bait, fishing, taking, catching, or killing of any aquatic life for commercial purposes;
- (3) Moneys, other than informers' fees authorized under section 187A-14, collected as fines or bail forfeitures or administrative fines for violations of this chapter;
- (4) Moneys collected from the sale of any article purchased from the department related to aquatic life used for commercial purposes or fishing for commercial purposes;
- (5) Any monetary contributions or moneys collected from the sale of non-monetary gifts to benefit aquatic life used for commercial purposes or fishing for commercial purposes; and
- (6) Moneys derived from interest, dividend, or other income from the above sources.

(c) Expenditures from the commercial fisheries special fund shall be limited to the following:

- (1) Programs and activities for projects concerning aquatic life used for commercial purposes;
- (2) Developing and conducting resource monitoring programs, conducting studies to determine the sustainable use of aquatic life for commercial purposes, and developing recommendations for acceptable levels of use; and
- (3) Research programs and activities concerning the conservation and management of aquatic life for commercial purposes. Research programs and activities conducted under this paragraph may be conducted by personnel of the department or through grants-in-aid to or contracts with the University of Hawaii or other qualified organizations or individuals.

(d) The proceeds of the commercial fisheries special fund shall not be used as security for, or pledged to the payment of principal or interest on, any bonds or instruments of indebtedness.

(e) In addition to subsection (c), the department may use moneys in the commercial

fisheries special fund for the importation and management, preservation, propagation, and protection of aquatic life used for commercial purposes in the State.

(f) Nothing in this section shall be construed to prohibit the use of general funds or the funds of other programs and activities to implement or enforce title 12, subtitle 5, concerning management and conservation of aquatic life used for commercial purposes.

(g) This section shall be repealed on June 30, 2001; provided that upon its repeal, all unexpended and unencumbered moneys remaining on balance within the commercial fisheries special fund shall lapse into the general fund. [L 1996, c 220, §1]

PART II. LARGE FISHING VESSEL PURCHASE, CONSTRUCTION, RENOVATION, MAINTENANCE, AND REPAIR LOAN PROGRAM

§189-21 Definitions. As used in this part:

"Department" means the department of planning and economic development.*

"Director" means the director of planning and economic development.*

"Large fishing vessel" means any vessel five net tons and over designed to be used in the Hawaii commercial fisheries for catching fish, processing, or transporting fish loaded on the high seas that derives at least fifty-one per cent of that vessel's gross annual income from commercial (as opposed to recreational) operations, or any vessel outfitted for such activity.

"National Marine Fisheries Service" means the Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, United States Department of Commerce.

"SBA" means the Federal Small Business Administration. [L 1965, c 193, §2; Supp. §21-101; HRS §189-21; am L 1975, c 167, pt of §4; am L 1976, c 70, pt of §1]

Revision Notes

Numeric designations deleted and definitions rearranged.

"Financial Assistance Division", National Marine Fisheries Service, now known as "Financial Services Division".

***Unofficial note**

Sic *Hawaii Revised Statutes/Volume 3/1985 Replacement; Hawaii Revised Statutes/1992 Supplement* says

§189-21 AMENDED. "Department of business and economic development" changed to "department of business, economic development, and tourism". "Director of business and economic development" changed to "director of business, economic development, and tourism". L 1987, c 336, §7; am L 1990, c 293, §8.

§189-22 Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan program. There is hereby created the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan program which shall be administered by the director in accordance with the spirit and intent of this part. [L 1965, c 193, §3; Supp. §21-102; HRS §189-22; am L 1975, c 167, pt of §4; am L 1976, c 70, pt of §1]

§189-23 Hawaii large fishing vessel purchase, construction, renovation,

maintenance, and repair loan revolving fund.

There is established the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund into which shall be deposited all moneys received as repayment of loans and interest payments as provided for in this part. The department may transfer moneys from the revolving fund established by this section either to the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 18943, the Hawaii capital loan revolving fund established by section 210-3, or the Hawaii innovation development revolving fund established by section 211E-2, and moneys from these three funds shall be disbursed by the department pursuant to chapters 189, 210, and 211E, respectively, and further, the department may transfer moneys from the revolving funds enumerated in this section to the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred into any revolving fund shall not exceed \$ 1,000,000 for each revolving fund within the calendar year; and
- (2) The department shall report any transfer under this section to the legislature within ten days of the transfer. [*L 1965, c 193, §4; Supp, §21-103; HRS §189-23; am L 1975, c 167, pt of §4; am L 1976, c 70, pt of §1; am L 1991, c 43, §2*]

Cross Reference

Evaluation and review process of fund, see §23-11 (note).

§189-24 Functions, powers, and duties of director. In the performance of, and with respect to, the functions, powers, and duties vested in the director by this part, the director shall:

- (1) Prescribe the qualifications for eligibility of applicants for loans and, in so doing, be guided by requirements as set forth in Public Law 88-498.
- (2) Establish preferences and priorities in determining eligibility for loans.
- (3) Establish the conditions, consistent with the purposes of this part, for the granting of the loan.
- (4) Provide for inspection, at reasonable hours, of the vessel, books, and records of an individual or enterprise who has applied for or has been granted a loan and to require the submission of progress and final reports.
- (5) Adopt rules and regulations under chapter 91 to carry out this part. [*L 1965, c 193, §5; Supp, §21-104; HRS §189-24; am L 1968, c 28, §2; am L 1975, c 167, pt of §4; am L 1976, c 70, pt of §1; am imp L 1984, c 90, §1*]

§189-25 Loans, terms, and restrictions.

The department may make loans to individuals or businesses for the financing of the purchase, construction, renovation, maintenance, or repair of vessels. The loans may be made in conjunction with loans made by other financial institutions including the Financial Assistance Division of the National Marine Fisheries Service and the SBA. Where the loans made by the department are secured, such security may be subordinated to the loans made by other financial institutions, when subordination is required in order to obtain loans

from the institutions. The necessity for and the extent of security required in any loan shall be determined by the director.

The foregoing powers shall be subject, however, to the following restrictions and limitations:

- (1) No loan of state funds shall exceed eighty per cent of the cost of purchase, construction, renovation, maintenance, or repair of a vessel.
- (2) No loan for renovation, maintenance, or repair of a fishing vessel shall exceed \$50,000 nor for a term exceeding ten years.
- (3) No loan for purchase or construction of a fishing vessel shall be made for a term exceeding twenty years.
- (4) Each loan shall bear simple interest at the rate of seven and one-half per cent a year.
- (5) The commencement date for the repayment of the first installment on the principal of each loan may be deferred by the director, but in no event shall such initial payment be deferred in excess of two years.
- (6) In the event the State repossesses any vessel financed under this program, the repossessed vessel shall not be resold to the individual to whom the loan has been made, or to anyone with a financial interest in the vessel. [*L 1965, c 193, §6; Supp, §21-105; HRS §189-25; am L 1968, c 28, §3; am L 1975, c 167, pt of §4; am L 1976, c 70, pt of §1*]

Revision Note

"Financial Assistance Division", National Marine Fisheries Service, now known as "Financial Services Division".

§189-26 Reports. The department shall make an annual report for the period ending December 31 to the governor, the president of the senate, and the speaker of the house of representatives, on the progress made under this part. The report shall be submitted not later than February 1 immediately following the calendar year period covered by the report. [*L 1965, c 193, §7; Supp, §21-106; HRS §189-26; am L 1975, c 167, pt of §4; am L 1976, c 70, pt of §1*]

PART III. FISHERMAN TRAINING

§§189-31 to 35 REPEALED. L 1973, c 79, §1.

PART IV. HAWAII SMALL FISHING VESSEL LOAN PROGRAM

§189-41 Findings and purpose. The purpose of this part is to insure the continued orderly development of Hawaii's small commercial fishing vessel fleet by providing financial assistance for the maintenance and repair of small commercial fishing vessels in order to increase productivity in traditional state fishing grounds and to foster development of new fishing grounds by Hawaii's small commercial fishing vessels. The legislature finds that: (1) the several financial assistance programs available to Hawaii's commercial fishermen are primarily for new vessel construction with national agency program emphasis on large fishing vessels; (2) that the large majority of Hawaii's commercial fishing vessels are small vessels (under 5 net tons, i.e., under 31 feet long) whose owners often do not have the financial resources of the larger vessels; (3) there is no financial program specializing in providing financial assistance for the maintenance and repair

of smaller commercial fishing vessels; (4) that the nature of commercial fishing is noted for occasional poor years when reduced landings adversely affect the economic resources of commercial fishermen, especially those with the smaller vessels; (5) that the recently released report "Hawaii and the Sea - 1974" calls for further development of measures to strengthen Hawaii's commercial fishing fleet, for example, by expanding the present Hawaii Fisheries New Vessel Construction Loan Program (Act 193, Session Laws of Hawaii 1965, as amended by Act 28, Session Laws of Hawaii 1968); (6) that the Hawaii Fisheries New Vessel Construction Loan Program does not include maintenance and repair of small commercial fishing vessels; (7) that the creation of a maintenance and repair loan program would help fulfill the intent of "Hawaii and the Sea - 1974"; (8) that some usually efficient commercial fishermen, due to the above reasons, are unable to upgrade their vessels in order to take advantage of new fishing gear and technology; and (9) that the State of Hawaii should make every effort to strengthen its small commercial fishing vessel fleet. [L 1975, c 167, §7; am L 1976, c 70, pt of §2]

§189-42 Definitions. As used in this part:

"Department" means the department of planning and economic development.

"Director" means the director of planning and economic development.

"National Marine Fisheries Service" means Financial Assistance Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, United States Department of Commerce.

"SBA" means the Federal Small Business Administration.

"Small fishing vessel" means any vessel under five net tons designed to be used in catching fish, processing, or transporting fish loaded on the high seas that derives at least fifty-one per cent of that vessel's gross annual income from commercial (as opposed to recreational) operations, or any vessel outfitted for such activity. [L 1975, c 167, §8; am L 1976, c 70, pt of §2]

Revision Notes

Numeric designations deleted and definitions rearranged.

"Financial Assistance Division", National Marine Fisheries Service, now known as "Financial Services Division".

*Unofficial note

Sic Hawaii Revised Statutes/Volume 3/1985 Replacement; Hawaii Revised Statutes/1992 Supplement says

§189-42 AMENDED. "Department of business and economic development" changed to "department of business, economic development, and tourism". "Director of business and economic development" changed to "director of business, economic development, and tourism". L 1987, c 336, §7; am L 1990, c 293, §8.

§189-43 Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan program; revolving fund. (a) There is created the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan program, which shall be administered by the director in accordance with the spirit and intent of this part.

(b) There is established the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund into

which shall be paid all moneys received as repayment of loans and interest payments as provided in this part. The department may transfer moneys from the revolving fund established by this section either to the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 189-23, the Hawaii capital loan revolving fund established by section 210-3, or the Hawaii innovation development loan revolving fund established by section 211E-2, and moneys from these three funds shall be disbursed by the department pursuant to chapters 189, 210, and 211E, respectively, and further, the department may transfer moneys from the revolving funds enumerated in this section to the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund for disbursement pursuant to this chapter; provided that

- (1) The amount of moneys transferred into any revolving fund shall not exceed \$1,000,000 for each revolving fund within the calendar year; and
- (2) The department shall report any transfer under this section to the legislature within ten days of the transfer. [am L 1991, c 43, §3]

Cross Reference

Evaluation and review process of fund, see §23-11 (note).

§189-44 Functions, powers, and duties of the director. In performance of, and with respect to, the functions, powers, and duties vested in the director by this part, the director shall:

- (1) Prescribe the qualifications for eligibility of applicants for loans.
- (2) Establish preferences and priorities in determining eligibility for loans.
- (3) Establish the conditions, consistent with the purposes of this part, for the granting of the loan.
- (4) Provide for inspection, at reasonable hours, of the vessel, records and books of an individual or enterprise who has applied for or has been granted a loan and to require the submission of periodic reports.
- (5) Adopt rules and regulations under chapter 91 to carry out this part. [L 1975, c 167, §10; am L 1976, c 70, pt of §2; am imp L 1984, c 90, §1]

§189-45 Loans, terms, and restrictions. The department may make loans to individuals or businesses for the financing of expenses incurred in the purchase, construction, renovation, maintenance, and repair of small fishing vessels. The loans may be made in conjunction with loans made by other financial institutions including the Small Business Administration or loans guaranteed by the National Marine Fisheries Service. Where the loans made by the department are secured, such security may be subordinated to the loans made by other financial institutions, when such subordination is required in order to obtain loans from such institutions. The necessity for and the extent of security required in any loan shall be determined by the director.

The foregoing powers shall be subject, however, to the following restrictions and limitations:

- (1) No loan shall exceed \$50,000.
- (2) No loan shall be made for a term exceeding ten years.
- (3) Each loan shall bear simple interest at the

- rate of seven and one-half per cent a year.
- (4) The commencement date for the repayment of the first installment on the principal of each loan may be deferred by the director, but in no event shall such initial payment be deferred in excess of two years. [L 1975, c 167, §11; am L 1976, c 70, pt of §2]

§189-46 Reports. The department shall make a report for the period ending December 31 of each year to the governor, the president of the senate, and the speaker of the house of representatives, on the progress made under this part. The report shall be submitted not later than February 1 immediately following the period covered by the report. [L 1975, c 167, §12; am L 1976, c 70, pt of §2]

Chapter 189G, Hawaii Revised Statutes, is repealed [L1988, c 176, pt 10]

CHAPTER 190 MARINE LIFE CONSERVATION PROGRAM

SECTION

- 190-1 CONSERVATION AREA; ADMINISTRATION
- 190-1.5 STATE MARINE WATERS
- 190-2 ESTABLISHMENT AND MODIFICATIONS OF CONSERVATION DISTRICT
- 190-3 RULES
- 190-4 PERMITS
- 190-4.5 ANCHORING, BOATING, AND MOORING IN MARINELIFE CONSERVATION DISTRICTS: RULES
- 190-5 PENALTY

§190-1 Conservation area; administration. All marine waters of the State are hereby constituted a marine life conservation area to be administered by the department of land and natural resources subject to this chapter and any other applicable laws not inconsistent herewith or with any rules adopted pursuant hereto. No person shall fish for or take any fish, crustacean, mollusk, live coral, algae or other marine life, or take or alter any rock, coral, sand or other geological feature within any conservation district established pursuant to this chapter except in accordance with section 190-4 and rules adopted by the department pursuant hereto. [L 1955, c 192, §2; RL 1955, §21-131; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §190-1; am L 1981, c 16, §1]

§190-1.5 State marine waters. As used in this chapter, state marine waters shall be defined as extending from the upper reaches of the wash of the waves from shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary. [L 1990, c 126, §4]

§190-2 Establishment and modifications of conservation district. The department of land and natural resources may establish and from time to time modify the limits of one or more conservation districts in each county and may, if it deems necessary, declare all waters within any county a conservation district. [L 1955, c 192, §5; RL 1955, §21-134; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §190-2]

§190-3 Rules. The department of land and natural resources pursuant to chapter 91, shall adopt rules governing the taking or conservation of fish, crustacean, mollusk, live coral, algae, or

other marine life as it determines will further the state policy of conserving, supplementing and increasing the State's marine resources. The rules may prohibit activities that may disturb, degrade, or alter the marine environment, establish open and closed seasons, designate areas in which all or any one or more of certain species of fish or marine life may not be taken, prescribe and limit the methods of fishing, including the type and mesh and other description of nets, traps, and appliances, and otherwise regulate the fishing and taking of marine life either generally throughout the State or in specified districts or areas. The rules shall upon taking effect supersede any state laws inconsistent therewith. [L 1955, c 192, §6; RL 1955, §21-135; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §190-3; am L 1981, c 16, §2]

§190-4 Permits. The department of land and natural resources may, in any conservation district, prohibit the taking of marine life or the engaging in activities prohibited by this chapter and rules adopted thereunder, except by permit issued by it for scientific, education, or other public purposes on such terms and conditions deemed necessary to minimize any adverse effect within the conservation district. The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation. [L 1955, c 192, §7; RL 1955, §21-136; am L Sp 1959 2d, c 1, §22; am L 1961, c 132, §2; HRS §190-4; am L 1981, c 16, §3]

§190-4.5 Anchoring, boating, and mooring in marine life conservation districts; rules. (a) The department shall, pursuant to chapter 91, adopt rules for the regulation of anchoring and mooring in each marine life conservation district established under this chapter.

(b) Within its jurisdiction over ocean recreational boating and coastal activities, the department shall adopt rules pursuant to chapter 91 for the regulation of boating in each marine life conservation district established under this chapter. [L 1988, c 381, §1; am L 1991, c 183, §1]

§190-5 Penalty. (a) Any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued under section 190-4, shall be guilty of a petty misdemeanor and punished as provided in subsections (b) and (c).

(b) The punishment, in addition to any other penalties, shall be a fine of not less than:

- (1) \$250 for a first offense;
- (2) \$500 for a second offense; and
- (3) \$1,000 for a third or subsequent offense.

(c) The fines shall not be suspended or waived. [L 1955, c 192, §8; RL 1955, §21-137; HRS §190-5; am L 1981, c 16, §4; am L 1999, c 195, § 9]

[intervening CHAPTERS omitted from this compendium:

- 191 BIRDS AND MAMMALS (repealed)
- 192 SHOOTING PRESERVES...(repealed)
- 193 CONSERVATION EMPLOYMENT PROGRAMS
- 195 NATURAL AREA RESERVES SYSTEM
- 195D CONSERVATION OF AQUATIC LIFE, WILDLIFE, AND LAND PLANTS
- 195F FOREST STEWARDSHIP
- 196 ENERGY RESOURCES
- 196D GEOTHERMAL AND CABLE SYSTEM DEVELOPMENT

CHAPTER 197 GENERAL PROVISIONS RELATING TO AQUATIC RESOURCES AND WILDLIFE

SECTION

197-1	DEFINITIONS
197-2	ANIMAL SPECIES ADVISORY COMMISSION
197-3	INTRODUCTION OF AQUATIC LIFE AND WILDLIFE
197-4	AQUATIC LIFE AND WILDLIFE ADVISORY COMMITTEES
197-5	GENERAL PENALTY

§197-1 Definitions. As used in this chapter, unless the context indicates otherwise:

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral or other animal that inhabits the freshwater and marine environment and includes any part, product, egg or offspring thereof; or freshwater and marine plants, including seeds, roots, and other parts thereof.

"Board" means the board of land and natural resources.

"Commission" means the animal species advisory commission.

"Committee" means the aquatic life and wildlife advisory committee established in each of the counties of the State.

"Conservation" means to use and the use of all methods and procedures for the purpose of managing populations of aquatic life and wildlife and their habitats.

"Department" means the department of land and natural resources.

"Habitat" means a locality or environment in which aquatic life, wildlife or land plants (as defined in chapter 195D) grow or live.

"Indigenous species" means any aquatic life, wildlife, or land plant (as defined in chapter 195D) growing or living naturally in Hawaii without having been brought directly or indirectly to Hawaii.

"Introduction" means an act of establishing aquatic life or wildlife into a habitat to which it is not indigenous.

"Take" means to fish, trap, hook, net, spear, harvest, pick or withdraw aquatic life from the water, or to injure, hunt, shoot, wound, kill, trap, net, capture, or possess wildlife.

"Wildlife" means any non-domesticated member of the animal kingdom, including game birds and mammals designated by law or rules for hunting, whether reared in captivity or not, and includes any part, product, egg or offspring thereof, except aquatic life as defined in this section. [L 1985, c 74, pt Of §1]

§197-2 Animal species advisory commission. (a) There is established within the department an animal species advisory commission which may serve in an advisory capacity to the board. The commission shall consist of thirteen members to be appointed by the governor in the manner provided in section 26-34. The chairperson of each aquatic life and wildlife [*sic HRS 1985 Replacement*] advisory committee established pursuant to this chapter and three members of the department designated by the chairperson of the department, one each from the professional fields of aquatic life, wildlife, and conservation and resources enforcement shall serve as members of the commission. Six of the members shall be scientists in the fields of botany, mammalogy,

ichthyology, entomology, ornithology, and invertebrate zoology. The commission shall select its own chairperson.

(b) The commission may advise the board on every proposal for the deliberate introduction of aquatic life and wildlife by the department into any habitat within the State, whether the introduction proposed is from without the State into the State, or from one area in the State into another area in the State.

(c) The commission may also advise the board on any matter affecting the taking and conservation of aquatic life and wildlife including proposed rules. The commission may hear such persons and acquire such information as it desires and shall communicate its findings and recommendations to the board. [L 1985, c 74, pt of §1]

§197-3 Introduction of aquatic life and wildlife.

(a) No species of aquatic life and wildlife shall be deliberately introduced by the department under this chapter into any habitat within the State, whether the introduction is from without the State into the State or from one area in the State into another area in the State unless the introduction is recommended by the department and authorized by rules of the department pursuant to chapter 91.

(b) The department, in determining whether to recommend the deliberate introduction of aquatic life and wildlife, shall make the following findings:

- (1) The factors which limit the distribution and abundance of the species in its native habitat have been studied and its probable dispersal pattern appraised;
- (2) Whether in the area where the species is proposed to be introduced there is or had been stock of a desirable, ecologically comparable indigenous species which can be increased or rehabilitated by reintroduction or by encouraging extension of its range;
- (3) Whether the species proposed to be introduced would threaten the existence and stability of any indigenous species as predator; competitor for food, cover, or breeding sites; or in any other way arising from its characteristics and ecological requirements;
- (4) The availability of socially acceptable methods of eliminating the species or keeping it under control in the area where it is proposed to be introduced and in adjoining areas;
- (5) The extent to which the species will enhance the economic and aesthetic values of the area where it is proposed to be introduced;
- (6) That the individuals to be introduced are free of communicable diseases and parasites and that there is no reason to believe that any communicable disease or parasite constitutes an important factor in the control of population; and
- (7) That there is no foreseeable risk of conflict on account of the introduction with land use policies in the area where a species is proposed to be introduced or in adjoining areas to which the species might spread.

(c) Before any species of aquatic life or wildlife is introduced, under this chapter, into a habitat, the suitability of the introduction shall be tested, if there is available an experimental area which can be fully controlled with a habitat typical of the

area where the species is proposed to be introduced.

(d) When a species of aquatic life or wildlife is deliberately introduced into a habitat under this section, and until the species becomes established there on a stable basis, the department shall conduct studies of the introduced species in its new habitat, including studies of its rate of spread and impact on the habitat.

(e) Any person who violates this section or any rule adopted pursuant to this section shall be subject to the penalties provided in section 197-5. [L 1985, c 74, pt of §1]

§197-4 Aquatic life and wildlife advisory committees. (a) There is established in each of the counties of the State an aquatic life and wildlife advisory committee. Each committee shall be composed of members of the board representing the county, who shall serve ex officio and shall be nonvoting members, and five members appointed by the governor in accordance with section 26-34, who shall be knowledgeable in the taking and conservation of aquatic life and wildlife. The members shall serve for four-year terms. Each committee shall select its own chairperson from its voting members, and three voting members shall constitute a quorum. Members of the committees shall receive no compensation but shall be reimbursed by the board for all necessary expenses, including stenographic services.

(b) A committee shall meet at the call of its chairperson or of any three of its members for the consideration of any matter affecting the taking and conservation of aquatic life and wildlife within the county, including proposed rules and the enforcement thereof. Each committee may hear such persons and acquire such information as it desires and shall communicate its findings and recommendations to the department. [L 1985, c 74, pt of §1]

§197-5 General penalty. Any person violating any of the provisions of this chapter, or any rule adopted pursuant to this chapter, shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished as provided by law. [L 1985, c 74, pt of §1]

Chapters omitted in this compendium
198 CONSERVATION EASEMENTS
198D HAWAII STATEWIDE TRAIL AND ACCESS SYSTEM

SUBTITLE 7. ENFORCEMENT

CHAPTER 199

CONSERVATION AND RESOURCES

ENFORCEMENT PROGRAM

§199-7 Search and seizure; forfeiture of property. (a) Any police officer or agent of the department of land and natural resources upon whom the board of land and natural resources has conferred powers of police officers, shall have the authority to conduct searches on probable cause as provided by law and to seize any equipment, article, instrument, aircraft, vehicle, vessel, business records, or natural resource used or taken in violation of the provisions contained in chapters 6E and 6K, or title 12, or any rules adopted thereunder. For purposes of this section, "natural resource" includes any archaeological artifacts, minerals, any aquatic life or wildlife or parts thereof, including their eggs, and any land plants or parts thereof, including seeds.

(b) Any equipment, article, instrument,

aircraft, vehicle, vessel, business records, or natural resource seized is subject to forfeiture pursuant to chapter 712A. Unless otherwise directed by the court, subject to the provisions of chapter 712A, any item, other than a natural resource, seized shall be ordered forfeited to the State for disposition as determined by the department, or may be destroyed, or may be kept and retained and utilized by the department or any other state agency. If not needed or required by the department or other state agency, the forfeited items shall be disposed of as provided by chapter 712A. Notwithstanding any other law to the contrary, any natural resource seized may be immediately returned to its natural environment or suitable habitat or may be disposed of as determined by the department; provided that if the natural resource disposed of was unlawfully seized, the department shall be liable to the owner for the fair market value of the items disposed of.

(c) The department of land and natural resources shall compile a list of all equipment, articles, instruments, aircraft, vehicles, vessels, or any natural resource forfeited as provided in this section and shall publish the list in its annual report.

(d) Notwithstanding any other law to the contrary, the department of land and natural resources may sell or take actions to cause the sale of any perishable natural resource that is seized to prevent the waste of the natural resource and to ensure the economic value of such natural resource. The department of land and natural resources may require the person or persons that took the natural resources to sell the seized natural resources at fair market value. The department of land and natural resources may require any person purchasing any seized natural resource to deliver the proceeds of the sale to the department of land and natural resources or its authorized representative. Any person who refuses to sell the seized natural resources at fair market value or any person who fails to deliver the proceeds of the sale, as directed by the department of land and natural resources, shall be in violation of this subsection and punishable as provided by law. The department of land and natural resources shall deposit and keep the proceeds of the sale in an interest bearing account until such time as the suspected violation is settled between the person or persons that took the natural resource, consignee or consignees, if any, and the department of land and natural resources. Should a settlement not be reached, the department of land and natural resources shall submit the proceeds of the sale to the court. The proceeds of the sale, after deducting any reasonable costs of the sale incurred by the department of land and natural resources, will be subject to any administrative or judicial proceedings in the same manner as the seized natural resource would have been, including an action in rem for the forfeiture of the proceeds. Seizure and sale of a natural resource is without prejudice to any other remedy or sanction authorized by law. [L 1997, c 17, §4; am L 1998, c 2, §53; am L 1999, c 233, §1]

Chapters omitted in this compendium
CHAPTER 200 - OCEAN RECREATION AND COASTAL AREAS PROGRAMS: PART II. BOATING LAW
CHAPTER 200D - KANEOHE BAY REGIONAL COUNCIL

CHAPTER 205A

COASTAL ZONE MANAGEMENT

§205A-44 Prohibitions (a) The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other beach or marine deposits from the shoreline area is prohibited with the following exceptions:

- (1) The taking from the shoreline area of the materials, not in excess of one gallon per person per day, for reasonable, personal, noncommercial use, provided that stricter provisions may be established by the counties;
- (2) Where the mining or taking is authorized by a variance pursuant to this part;
- (3) The clearing of the materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-11.5; provided that the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or
- (4) The cleaning of the shoreline area for state or county maintenance purposes, including the clearing for purposes under section 46-12; provided that the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity.

(b) Except as provided in this section, structures are prohibited in the shoreline area without a variance pursuant to this part. Structures in the shoreline area shall not need a variance if:

- (1) They were completed prior to June 22, 1970;
- (2) They received either a building permit, board approval, or shoreline setback variance prior to June 16, 1989;
- (3) They are outside the shoreline area when they receive either a building permit or board approval;
- (4) They are necessary for or ancillary to continuation of existing agriculture or aquaculture in the shoreline area on June 16, 1989;
- (5) They are minor structures permitted under rules adopted by the department which do not affect beach processes or artificially fix the shoreline and do not interfere with public access or public views to and along the shoreline; or
- (6) Work being done consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, which are publicly owned, and which result in little or no interference with natural shoreline processes;

provided that permitted structures may be repaired, but shall not be enlarged within the shoreline area without a variance. [L 1986, c 258, pt of §1; am L 1988, c 375, §1; am L 1989, c 356, §12]

Revision Note

"June 16, 1989" substituted for "the effective date of this Act" and "the effective date of this section".

Cross References

Mining or talking of sand, etc., see §171-58.5.

CHAPTER 171 PUBLIC LANDS MANAGEMENT

§171-58.5 Prohibitions. The mining or taking of sand, dead coral or coral rubble, rocks,

soil, or other marine deposits seaward from the shoreline is prohibited with the following exceptions:

- (1) The taking from seaward of the shoreline of such materials, not in excess of one gallon per person per day for reasonable, personal, noncommercial use;
- (2) For the replenishment or protection of public shoreline areas and adjacent public lands seaward of the shoreline, or construction or maintenance of state approved lagoons, harbors, launching ramps or navigational channels with a permit authorized under [section 183-41] chapter 183C;
- (3) The clearing of such materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-1.5, provided that the sand removed shall be placed on adjacent areas unless this placement would result in significant turbidity; or
- (4) The cleaning of areas seaward of the shoreline for state or county maintenance purposes including the purposes under section 46-12; provided that the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity. [L 1988, c 375, §2; am L 1989, c 356, §3; am L 1995, c 11, §3 and c 69, §2]

Cross References

Mining or taking of sand, etc, see §205A-44.

STATE CONSTITUTION ARTICLE XI CONSERVATION, CONTROL AND DEVELOPMENT OF RESOURCES Note

This article was redesignated from "Article X Conservation and Development of Resources" to be "Article XI Conservation, Control and Development of Resources" by Const Con 1978 and election Nov 7, 1978. The former Article XI now appears as Article XII.

[part] CONSERVATION AND DEVELOPMENT OF RESOURCES

Section 1. For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people. [Add Const Con 1978 and election Nov 7, 1978]

Note

A proposal of the 1978 Constitutional Convention deleted the former section I of the old Article X, which read: "Section 1. The legislature shall promote the conservation, development and utilization of agricultural resources, and fish, mineral, forest, water, land, game and other natural resources." This deletion appears to be one of the unspecified changes submitted for ratification under Question 34. On whether any of the changes submitted under Question 34 was in fact approved by the electorate, see *Kahalekai v. Doi*, 60 H. 324 (1979), excerpted in the note preceding the Preamble to the Constitution.

[part] **MANAGEMENT AND DISPOSITION OF
NATURAL
RESOURCES**

Section 2. The legislature shall vest in one or more executive boards or commissions powers for the management of natural resources owned or controlled by the State, and such powers of disposition thereof as may be provided by law; but land set aside for public use, other than for a reserve for conservation purposes, need not be placed under the jurisdiction of such a board or commission.

The mandatory provisions of this section shall not apply to the natural resources owned by or under the control of a political subdivision or a department or agency thereof. [Ren and am Const Con 1978 and election Nov 7, 1978]

[part] **MARINE RESOURCES**

Section 6. The State shall have the power to manage and control the marine, seabed and other resources located within the boundaries of the State, including the archipelagic waters of the State, and reserves to itself all such rights outside state boundaries not specifically limited by federal or international law.

All fisheries in the sea waters of the State not included in any fish pond, artificial enclosure or state-licensed mariculture operation shall be free to the public, subject to vested rights and the right of the State to regulate the same; provided that mariculture operations shall be established under guidelines enacted by the legislature, which shall protect the public's use and enjoyment of the reefs. The State may condemn such vested rights for public use. [Ren and am Const Con 1978 and election Nov 7, 1978]

Case Notes

Private fishing rights not established under §96 of the Organic Act continue to be free to the free to the public under this section. 48 H. 152, 192, 397 P.2d 593.

**ARTICLE XII
HAWAIIAN AFFAIRS**

[part] **TRADITIONAL AND CUSTOMARY
RIGHTS**

Section 7. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]

Note

A proposal of the 1978 Constitutional Convention adding a section 7 defining the terms "Hawaiian" and "native Hawaiian" was not validly ratified. *Kahalekai v. Doi*, 60 H. 324 (1979). In view of the holding, the revisor has deleted the section and renumbered section 8 as section 7 under the authority of Resolution No. 29 of the 1978 Constitutional Convention.

**ARTICLE XV
STATE BOUNDARIES; CAPITAL; FLAG;
LANGUAGE AND MOTTO**

Note

This article was redesignated from "Article XII State Boundaries, Capital, Flag" to "Article XV State Boundaries; Capital; Flag; Language and Motto" by Const Con 1978 and election Nov 7,

1978. The former Article XV now appears as Article XVII.

[part] **BOUNDARIES**

Section 1. The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial and archipelagic waters, included in the Territory of Hawaii on the date of enactment of the Admission Act, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters; but this State shall not be deemed to include the Midway Islands, Johnston Island, Sand Island (offshore from Johnston Island) or Kingman Reef, together with their appurtenant reefs and territorial waters. [Am '73 Stat 4 and election June 27, 1959; ren and am Const Con 1978 and election Nov 7, 1978]

Note

Date of enactment of Admission Act: March 18, 1959.

At election of June 27, 1959, in amending this section to conform to the Admission Act, Public Law 86-3 (73 Stat 4), pursuant to sections 2 and 7(b) of the Admission Act, State also relinquished to the United States "all claims of this State to any areas of land or sea outside the boundaries so prescribed...."

Legislative history of section 2 of Admission Act, see 196 F. Supp. 564.

Language adopted to describe boundaries in section 2 of the Admission Act first was used in H.R. 3575 as passed by the Senate, 83d Congress, 2d Session, April 7, 1954. See explanation of Senator Cordon, Chairman of Senate Committee on Interior and Insular Affairs, March 8, 1954, on consideration of S. 49 for which H.R. 3575 later was substituted, 100 Cong. Rec. p. 2789, cols. 1-2; and see Senate hearings on S. 49, S. 51, and H.R. 3575, 83d Congress, 1st and 2d Sessions, June 29, 1953-January 8, 1954, including materials on islands and reefs comprising Territory of Hawaii.

When Admission Act finally was enacted by 86th Congress, 1st Session, committee report stated that "the boundaries of the new State will include all of the islands and territorial waters of the Territory of Hawaii, except the Island of Palmyra." Other islands treated as excluded were "not considered to be part of the Territory." Sen. Rep. 80, H.R. Rep. No. 32, 86th Congress, 1st Session.

Report of the Commission which prepared the Hawaiian Organic Act, transmitted to Congress by message of the President, Sen. Doc. 16, 55th Congress, 3d Session, 1898, listed in addition to the eight principal islands and Palmyra, ten others. But this listing has not been deemed to be complete. See note to §2 of Hawaiian Organic Act. As to federal reservations, see note to §1-4.

Case Notes

Territorial waters extend only three miles from each island. 352 F.2d 735, aff. 235 F. Supp. 990. Question of jurisdiction over channels between islands raised but not decided. 47 H. 87, 384 P.2d 536.